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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,964	02/10/2004	Jia-Hwa Fang	PP16502.015	1609
7590		08/24/2007		
Alisa Harbin, Esq. Chiron Corporation Intellectual Property - R440 P. O. Box 8097 Emeryville, CA 94662				
			EXAMINER	
			FUBARA, BLESSING M	
			ART UNIT	PAPER NUMBER
			1618	
			MAIL DATE	DELIVERY MODE
			08/24/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/775,964	Applicant(s) FANG ET AL.	
	Examiner Blessing M. Fubara	Art Unit 1618	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

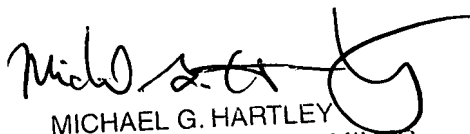
REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: claim 34 says that microparticles subjected to filtration step of microparticles are not subjected to a washing step, so that it is one or the other and not both; claim 37 does not exclude a wash step but simply filters the product; however, applicant's argument as it regards claim 39 that because Levy's examples require a washing step even if portions of Levy do not require a washing step is an admission that portions of Levy does not require a washing step; therefore, in spite of the examples of Levy disclosing a wash step, the general basic disclosure of Levy does not disclose a wash step so that the ordinary skilled artisan is guided by the disclosure of Levy to filter the microparticles and to further wash or not to wash the microparticles, Levy does not teach that the microparticles are free of bound detergent and there is no demonstration that the microparticles of Levy does not contain bound detergent or that the presence of 10-90% detergent, a broad range of detergent provides unexpected results. In the absence of a factual showing, a 10-90% detergent bound to the microparticles and/or centrifugation/filtration without washing does not patentably distinguish the inventive process over the process of the prior art that requires filtration step just as the claims require. Regarding applicant's argument that the absence of a wash-step in Levy would not necessarily produce the amounts of bound and unbound detergent of 10-90% and that the Examiner has not met the burden of showing inherency, it is noted that applicant has not provided factual evidence that the microparticles of Levy does not have the broad 10-90% detergent and burden is on applicant to show that the microparticles of Levy does not have 10-90% detergent. It is further noted that in the case cited by applicant, the issue was inherency deriving from optimization of conditions and applicant's argument is not one of optimization. Paliard was relied upon for disclosing emulsion containing PLG and CTAB, which could be used in place of SDS in the emulsion of Levy.

Regarding O'Hagan and claims 34, it is noted that claim in 34, the organic solvent is removed by subjecting the microparticles to a filtration step or are not subjected to a washing step and as it regards claim 34, it is either filtration or not subjected to washing; applicant has not provided factual evidence that the microparticles of O'Hagan does not have 10-90% detergent..

BF


MICHAEL G. HARTLEY
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